
(2020) 07 RAJ CK 0189
In the Rajasthan High Court
Case No : Spl. Appl. Writ No. 161 Of 2020

Shrawanram

APPELLANT

Vs

State Of Rajasthan And Ors

RESPONDENT

Date of Decision : 22-07-2020

Acts Referred:

Rajasthan Cooperative Societies Act, 2001 — Section 30, 30(1)(c), 30(C)

Citation : (2020) 07 RAJ CK 0189

Hon'ble Judges : Sandeep Mehta, J; Kumari Prabha Sharma, J

Bench : Division Bench

Advocate : Akshay Surana, Pappu Sangwa, Sunil Beniwal

Final Decision : Allowed

Judgement

By way of this appeal, the appellant Shrawanram has approached this Court for assailing the order dated 5.2.2020 passed by the learned Single Bench in S.B.Civil Writ Petition No.1832/2020, whereby the writ petition preferred by the appellant writ petitioner assailing the order dated 30.1.2020 passed by the Registrar, Cooperative Societies, Govt. of Rajasthan, Jaipur appointing the Regional Audit Officer, Cooperative Societies to be the Administrator of the Bikaner Primary Cooperative Land Development Bank Limited, Bikaner (hereinafter referred to as 'primary cooperative society' for short), was dismissed.

The appellant writ petitioner claims to have been elected as the Chairperson of the primary cooperative society vide minutes recorded in the meeting of its Managing Committee dated 16.1.2020. It may be stated here that as per the provisions of Section 30 of the Rajasthan Cooperative Societies Act (hereinafter to be referred to as 'the Act of 2001' for short), the term of the cooperative society had come to an end way-back on 5.8.2018 but despite the obligation cast upon the State Government to conduct fresh elections, the matter is still hanging at the end of the State Government. The Registrar, Cooperative Societies purportedly issued a notice dated 13.1.2020 to the Chairperson and members of the primary cooperative society under Section 30(1)(c) of the Act and on not

receiving any response, he proceeded to pass the order dated 30.1.2020, appointing an Administrator to govern the affairs of the society. The writ petition preferred by the appellant for assailing the said order was rejected by the learned Single Bench vide order dated 5.2.2020 which is assailed in the instant intracourt appeal.

Sarva Shri Akshay Surana and Pappu Sangwa Advocates, representing the appellant writ petitioner vehemently and fervently urged that the order dated 30.1.2020 is without jurisdiction because Section 30C of the Act of 2001 under which the Registrar exercised power for passing of the impugned order and also relied upon by the learned Single Bench in its order dated 5.2.2020 has long since been declared to be ultra virus and the proviso (1) to Section 31C as it existed prior to the amendment has been restored. Learned counsel representing the appellant urged that under the unamended provisions of Section 31C of the Act of 2001, the power to appoint an Administrator to govern the affairs of a primary Society can only be exercised by a Zonal Registrar and the Registrar, Cooperative Societies does not have any jurisdiction to pass such an order. They urged that the learned Single Bench, whilst rejecting the writ petition of the appellant writ petitioner, relied upon the statutory provision, which has been declared to be ultra virus and thus, the impugned order passed by the learned Single Bench as well as the order dated 30.1.2020 passed by the Registrar, Cooperative Societies, deserve to be quashed and set aside as the same are patently illegal.

Shri Sunil Beniwal, learned AAG appearing for the respondents is not in a position to dispute the fact that Section 30C of the Act of 2001 in reference whereof, the order dated 30.01.2020 came to be passed by the Registrar, Cooperative Societies and which was also relied upon by the learned Single Bench, was declared to be ultra virus by Division Bench of this Court in the case of Shri Bhanwar Lal Vs. State of Rajasthan & Ors. reported in 2017 (3) WLC (Raj.) 666. However, Shri Beniwal relied upon a Single Bench Judgment in the case of Rajendra & Ors. Vs. State Of Rajasthan & Ors. (S.B. Civil Writ Petition No.7041/2012 decided on 20.09.2016) and urged that as the Registrar, Cooperative Societies has powers of superintendence over the jurisdiction of a Zonal Registrar, it cannot be said that the Registrar had no jurisdiction to pass such order. Shri Beniwal however, was not in a position to justify the inaction of the State Government in failing to hold fresh elections of the Primary Cooperative Society despite the fact that more than two years have lapsed since the tenure of the elected body had come to an end.

We have given our thoughtful consideration to the arguments advanced at the Bar and have gone through the impugned order dated 5.2.2020 passed by the learned Single Bench as well as the order which was assailed by the appellant writ petitioner in the writ petition.

Suffice it to say that the learned Single Bench relied upon Section 30C of the Act of 2001 while holding that power to pass the order of appointment of

Administrator on completion of term of the Committee vests only with the Registrar, Cooperative Societies. It is undisputed that the said provision has been declared ultra virus by a Division Bench of this Court in the case of Bhanwar Lal Vs. State of Raj. reported in 2017 (3) WLC (Raj.) 666 and thus, the view taken by the learned Single Bench is ex-facie incorrect. In the case of Rajendra & Ors. (supra) relied upon by Shri Beniwal, the legality of the order passed by the State Government for appointment of Administrator was questioned before a Single Bench of this Court on the ground that the power to appoint the Administrator vested with the Registrar, Cooperative Societies. The learned Single Bench, in that case, refused to interfere in the order of consent passed by the State Government but still went on to quash the appointment of the Administrator holding that the same was illegal, arbitrary and without jurisdiction. The competent authority which was the Registrar, Cooperative Societies was left at liberty to appoint Administrator to manage the affairs of the Society. Thus, the said decision is distinguishable on facts and law.

Section 30(1) of the Act of 2001 reads as below :

"30. Removal of Committee or Member thereof. - (1) Where -

(a) the committee of a co-operative society

(i) persistently makes default; or

(ii) is negligent in the performance of its duties imposed on it by this Act or the rules or the bye-laws; or

(iii) commits any act prejudicial to the interest of the society or its members; or

(b) there is stalemate in the constitution or functions of the committee; or

(c) the term of the existing committee has expired and the State Co-operative Election Authority has failed to conduct elections for a new committee in accordance with the provisions of this Act or the rules made thereunder, the Zonal Registrar, in case of a primary society, the Registrar, Cooperative Societies, Rajasthan, in case of a central society and the State Government, in case of an apex society may, after giving the committee a reasonable opportunity of being heard, by order in writing, remove the committee and appoint a Government servant as an Administrator to manage the affairs of the society for a period not exceeding six months;

Provided that the committee of a society shall not be superseded where there is no Government share holding or loan or financial assistance or any guarantee by the Government;

Provided that in case of a co-operative society carrying on the business of banking, the provisions of the Banking Regulation Act, 1949 (Central Act No. 10 of 1949) shall also apply.

Provided also that in case of a co-operative society carrying on the business of

banking, the provisions of this clause shall have effect as if for the words "six months", the words "one year" had been substituted." A bare perusal of the statutory provision makes it clear that the power to appoint Administrator in the case of primary cooperative society vests exclusively with the Zonal Registrar. Though the Registrar, Cooperative Societies is above the Zonal Registrar in the order of hierarchy, but that by itself would not empower the Registrar to usurp the powers conferred upon the Zonal Registrar in this regard.

In view of the above discussion, we are of the firm opinion that the impugned orders cannot be sustained as the same have been passed with reference to the provision of law which stands expressly struck off from the statute book after having been declared ultra vires by a Division Bench of this Court in the case of Shri Bhanwar Lal (supra).

Accordingly, the special appeal deserves to be and is hereby allowed. The impugned order dated 05.02.2020 passed by the learned Single Bench in SBCWP No.1832/2020 and so also the order dated 30.01.2020 passed by the Registrar, Co-operative Societies are hereby quashed and set aside. Consequently, the appointment of Regional Audit Officer, Cooperative Societies as Administrator to manage the affairs of the primary cooperative society is quashed. Without prejudice to the fact that the State Government is under an obligation to convene fresh elections promptly for electing the members of the cooperative society, the Zonal Registrar competent to exercise jurisdiction, is left at liberty to pass fresh order for appointment of Administrator after following the due process of law if so deserved.

The appeal is allowed accordingly.